



To: Judge John J. Specia, Commissioner, Department of Family and Protective Services
Amy Tripp, Sunset Advisory Commission

Date: December 4, 2014

Re: Department of Family and Protective Services (DFPS) Transformation Report and
Amendments to Texas Family Code Chapter 263

Enclosed please find the Supreme Court Children's Commission's comments in response to the Child Protective Services Transformation Report submitted to the Sunset Advisory Commission on October 22, 2014.

A handwritten signature in black ink, reading "Tina Amberboy".

Tina Amberboy
Executive Director

**Comment in Response to Department of Family and Protective Services (DFPS)
Transformation Report To Sunset Advisory Commission**

Note: Statutory sections below refer to the Texas Family Code provision unless otherwise noted.

	Section Affected	Issue
I	Repeal of State Statutes as Duplicative of Federal Law, Transformation Report (TR), Appendix A	DFPS generally recommends the repeal of a number of provisions, citing they are duplicative of federal law, but provisions should not be removed from the Texas Family Code merely because they are codified in federal law. First, judges, lawyers, advocates, and the legislature look primarily to the Texas Family Code, not federal law, for guidance in child welfare matters. Moreover, federal law is in many ways to state law what state law is to agency rule. It does not always stand alone as an adequate governor because it often merely provides the framework upon which states build. As a state, it is important to have state policies and practices that reflect state law, because federal law might change in a way that does not reflect what Texas desires to do in law, policy, or practice. Additionally, deleting Texas statutes because they overlap with federal statutes potentially impacts how a state court interprets the state statute as federal law may not provide controlling effect to a definition in a parallel state statute.
2	107.003 and 107.0131 Changes to Attorney ad Litem Duties and Responsibilities (TR, pp. 48-49, 104)	<p>DFPS proposes amending Section 107.003 (Powers and Duties of Attorney ad Litem for Child and Amicus Attorney) in a manner similar to its proposal for Section 107.002. It may make sense to clarify that attorneys for children are not entitled to attend or participate in every case-related meeting.</p> <p>Proposed language for Section 107.003:</p> <p><u>Amend Sec 107.003(3)(F) participate in any planning meeting conducted by the Department of Family and Protective Services in which external parties are invited to participate, including, as appropriate, a case staffing to develop a family or child plan of service, a family group</u></p>

	<p><u>decision making meeting including a Circles of Support meeting, a mediation, and any other case staffing that the department determines would be appropriate for external participants, but excluding any internal department staffing or staffing between the department and the department's legal representative case staffing concerning the child conducted by an authorized agency; and</u></p> <p>(G) attend all legal proceedings in the suit.</p> <p>DFPS also proposes amending Section 107.003(b) to require the attorney ad litem to discuss potential placements and relative information with the child and, if possible, provide any information obtained to DFPS before the Adversary Hearing. DFPS further suggests mandating that the attorney ad litem, following the Adversary Hearing, assume an ongoing obligation to continue to discuss potential placements and relative information with the child and provide updated information to DFPS. Obtaining potential placement information and gathering relative information is primarily, and foremost, the Department's responsibility. Attorneys ad litem often discuss potential placements with clients, and like guardians ad litem and CASA volunteers, will be better able to discuss potential placements if Section 264.117(a) is not repealed.</p> <p>DFPS recommends amending Section 107.003(b) to require the attorney ad litem to explain to the child, in a developmentally appropriate manner, the rights described in the foster children's bill of rights provided in Section 263.008 and possible consequences if those rights are violated. Family Code Section 263.008 (c) specifically requires DFPS to provide a written copy of the bill of rights to each child placed in foster care in the child's primary language, if possible, and inform the child of the rights described by the bill of rights. Attorneys ad litem may also review the bill of rights with their clients, and perhaps even interpret the rights, but it is not clear from the statute that there are any consequences if the rights are violated. In fact, Section 263.008(h), as enacted, does not create a cause of action and fails to clearly identify the</p>
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		<p>remedies available if a violation occurs. Subsection (g) currently requires DFPS to have a policy for receiving and handling reports concerning whether rights are being observed. Moreover, that statute also requires DFPS to provide information to a child about how to report a violation.</p> <p>DFPS also seeks to modify the duties and responsibilities of parents' attorneys by amending Section 107.0131. Specifically, two new duties would be added to subsection (a)(1): 1) informing parents of their rights in connection with the service planning process required pursuant to Chapter 263, Subchapter B; and 2) discussing potential placements with parents and assisting them in completing and submitting the proposed child placement resources form required by Section 261.307(a)(2).</p> <p>The first new duty is problematic in those circumstances when the parent is not represented by counsel. The second duty may be appropriate for an attorney, but if the parent does not have an attorney at the time the child placement resources form must be filed with the court, DFPS is the most likely party to assist the parent in completing the form. Certainly, if attorneys are appointed prior to the adversary hearing, an expectation that he or she will assist the parent with the child placement resources form is reasonable.</p>
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3	<p>107.031(c), 263.0025, and Education Code 29.015</p> <p>The Involvement of Surrogate Parents, Foster Parents, and Volunteer Advocates in Special Education Issues (TR, pp. 97-100)</p>	<p>DFPS recommends repealing Texas Family Code Sections 107.031(c) (Volunteer Advocates) and 263.0025 (Appointment of Surrogate Parent) and Texas Education Code Section 29.015 (Foster Parents). These provisions give judges guidance about who to appoint as the Surrogate Parent for a child with a disability who is eligible for special education services. Special education law is very complex and much care must be used when repealing, amending, or consolidating Family and Education Code provisions in order to avoid compromising federal law, and to ensure the special education needs of students in foster care are met. The proposed changes would incorporate all Surrogate Parent references into the Texas Education Code despite existing confusion about the court's authority to appoint a Surrogate Parent. Notably, the current provision in the Family Code places no additional burden on DFPS. DFPS also seeks to change the state definition of "parent" for special education purposes and to allow any foster parent to be considered as a parent absent a conflict of interest. This potentially limits court and school district discretion to determine whether the foster parent is the appropriate decisionmaker regarding special education. Further, the proposed changes remove important details about who is eligible to serve as a Surrogate Parent. Lastly, the DFPS recommendations potentially affect the court's ability to appoint Court Appointed Special Advocates (CASA) as the Surrogate Parent, especially the recommendation to repeal the requirements that must be met before appointing a CASA. These modifications would seriously impact the current processes used to appoint Surrogate Parents. Before making any changes, further consultation with education partners and judges must occur to ensure the special education needs of children with disabilities in foster care are adequately met and to safeguard against any impact on judicial discretion.</p>
4	<p>161.103I</p> <p>Child's Family Medical History (TR, p. 71)</p>	<p>– The suggested change to Section 161.103I may impair child well-being if no family medical history is collected or made available to the child's caregiver or adoptive family. DFPS may be able to obtain the history when permanency plan changes from reunification to concurrent or can simply</p>

		identify some point in the case to gather the information rather than at mediation or the time at which the parent executes an affidavit of relinquishment.
5	26I.307 Information Relating to Investigation Procedure (TR, p. 62)	<p>DFPS proposes repealing Section 26I.307, suggesting the statute goes beyond federal law and can be interpreted to require a lengthy, line-by-line review of information related to the investigation. It reasons that parents are not likely to want to review this information in depth and forcing the parent to do so damages prospects of building rapport. In lieu of a statute, DFPS proposes developing a best practice to handle this type of information. The statute sets out the information that must be provided to parents, which DFPS currently does via brochure. There is no statutory requirement that it be explained line-by-line; it is perhaps DFPS policy that requires an in-depth explanation at the time the brochure is delivered.</p> <p>It's unclear whether DFPS wants to repeal both subsections (a) and (b). While there is no objection to the proposal to repeal this section, there would be no need for attorneys to assist parents with filling out the child placement resources form, required of DFPS in subsection (b), if the entire section is repealed.</p>
6	262.II4(a) and (b) Evaluation of Identified Relatives and other Designated Individuals; Placement (TR, pp. 117-18 and p. 52)	<p>DFPS proposes limiting the number of relative home studies it must undertake by amending Section 262.II4(a). Currently, DFPS is required to perform CPS and criminal background checks on relatives or individuals identified by the parents as potential caregivers. DFPS is also required to complete a home study of the most appropriate caregiver before the Adversary Hearing. But, while DFPS understandably cannot study an indeterminate number of relatives after children enter care, it is important to the safety of these children that judges retain discretion to order that home studies be completed based on the circumstances of the cases and the best interests of the subject children. Rather than a prohibition of a court's ability to order more than a certain number of home studies, alternative language that leaves some discretion with the court regarding additional home studies should be considered.</p>

		<p>DFPS also seeks to repeal Section 262.114(b). This statute currently allows DFPS to place a child without first conducting a CPS and criminal background check. Although repealing this statute might result in unintended consequences, DFPS is usually able to conduct criminal and CPS background checks 24 hours a day, seven days a week, and it should be rare that a placement would need to be made without these preliminary checks in place.</p>
7	262.203 Case Transfers (TR, p. 52)	<p>Texas Family Code Chapter 201, Section 201.007 governs the powers of an associate judge. Under this section, an associate judge has the authority to order a transfer from another court's docket when or if Mandatory Transfer rules under Section 155.201 apply. There is no need to amend Section 262.203.</p>
8	New Chapter 263 Provision Notice of Hearing (TR, p. 65)	<p>The Family Code requires that DFPS provide parents with notice of the investigation and removal of a child as well as relatives with notice of the removal. DFPS is also responsible for obtaining service of citation containing the original petition and notice of trial settings and other events during the pendency of the legal case. These service of process and notice requirements derive from the Texas Rules of Civil Procedure, the Texas Family Code, and federal law. The Family Code also expressly mandates that written notice of the case review hearings required by Chapter 263 be provided pursuant to Texas Rule of Civil Procedure 21a. DFPS recommends enacting a new notice provision in Chapter 263 or 264 that would clarify, in one place, who receives notice of significant case-related events.</p> <p>The following represents proposed language for a new Notice of Hearing provision enacted at Texas Family Code Section 263.0021:</p> <p><u>Add Sec. 263.0021. NOTICE OF HEARING. (a) Notice of any hearing under this chapter shall be given to all persons entitled to notice of the hearing.</u></p> <p><u>(b) The following persons are entitled to at least 10 days' notice of a hearing and are entitled to present evidence and be heard at</u></p>

		<p><u>the hearing:</u></p> <ul style="list-style-type: none"> <u>(1) the department;</u> <u>(2) the foster parent, pre-adoptive parent, relative of the child providing care, director or director's designee of the group home or general residential operation where the child is residing;</u> <u>(3) each parent of the child;</u> <u>(4) the managing conservator or guardian of the child;</u> <u>(5) an attorney ad litem appointed for the child under Chapter 107, if the appointment was not dismissed in the final order;</u> <u>(6) a guardian ad litem appointed for the child under Chapter 107, if the appointment was not dismissed in the final order</u> <u>(7) a volunteer advocate appointed for the child under Chapter 107, if the appointment was not dismissed in the final order;</u> <u>(8) the child if:</u> <ul style="list-style-type: none"> <u>(A) the child is 10 years of age or older; or</u> <u>(B) the court determines it is appropriate for the child to receive notice; and</u> <u>(9) any other person or agency named by the court to have an interest in the child's welfare.</u> <p><u>(c) Notice may be given:</u></p> <ul style="list-style-type: none"> <u>(1) as provided by Rule 21a, Texas Rules of Civil Procedure;</u> <u>(2) in a temporary order following a full adversary hearing;</u> <u>(3) in an order following a hearing under this chapter;</u> <u>(4) in open court; or</u> <u>(5) in any manner that would provide actual notice to a person entitled to notice.</u> <p><u>(d) The licensed administrator or licensed administrator's designee of the child-placing agency responsible for placing the child is entitled to not less than 10 days' notice of a permanency hearing after final order.</u></p>
9	Significant Events	May need to enact a new Chapter 263 Provision entitled Notice of Significant Event. Addressed below
10	263.004 Information Regarding Child's	In response to Section 263.004, DFPS created Form 2085E to notify courts, schools, attorneys ad litem, volunteer advocates, and other stakeholders of the identity

	Education Decision-maker – eliminate notice filed within five days of designation (TR, pp. 63-64)	<p>and contact information for the Education Decisionmaker and the Surrogate Parent, if applicable, within five days of any designation. DFPS seeks to amend Section 263.004 to require notice only to schools and to eliminate the mandatory statutory timeframe for providing such notice.</p> <p>Amend Sec. 263.004. NOTICE TO COURT REGARDING EDUCATION DECISION-MAKING. (a) Unless the rights and duties of the department under Section 153.371(10) to make decisions regarding the child's education have been limited by court order, the department shall <u>provide</u> [file with the court a report identifying] the name and contact information for each person who has been:</p> <p>(1) designated by the department to make educational decisions on behalf of the child; and</p> <p>(2) assigned to serve as the child's surrogate parent in accordance with 20 U.S.C. Section 1415(b) and Section 29.001(10), Education Code, for purposes of decision-making regarding special education services, if applicable.</p> <p>(b) Not later than the fifth day after the date an adversary hearing under Section 262.201 or Section 262.205 is concluded, the <u>information</u> [report] required by Subsection (a) shall be filed with the court and a copy shall be provided to:</p> <p>(1) each person entitled to notice of a permanency hearing under Section 263.301; and</p> <p>(2) the school the child attends.</p> <p>(c) If a person other than a person identified in the report required by Subsection (a) is designated to make educational decisions or assigned to serve as a surrogate parent, the department shall <u>include the updated information in the permanency progress report filed pursuant to Section 263.303 and Section 263.502</u> [file with the court an updated report that includes the information required by Subsection (a) for the designated or assigned person.] The updated <u>information</u> [report] must be <u>provided to the school the child attends</u> [filed] not later than the fifth day after the date of designation or assignment.</p>
II	263.201 Status Hearings (TR, p. 53)	Section 263.201 currently requires courts to hold a Status Hearing within 60 days of a child coming into the conservatorship of DFPS. DFPS recommends limiting Status Hearings to a narrow 15-day window between the

		45th and 60th day, allowing little leeway for courts to schedule the hearings as deemed necessary. This section should not be amended as proposed.
12	263.301, 263.303, 263.501, and 263.502 Notice of Permanency Hearings and Requirement to File Court Reports: (TR, pp. 37-40, 58-61, 125-29)	<p>DFPS also suggests that it is duplicative to provide both a 10-day notice of a hearing and a court report to the same list of persons 10 days in advance of the hearing, as currently required by statute. Under the belief that it would maximize efficiency, DFPS proposes providing notice of the hearing through the court report. This is not a workable solution because it is well documented in court and stakeholder accounts over a lengthy period of time that DFPS routinely fails to file court reports 10 days in advance of each Chapter 263 hearing. A new notice of hearings provision is proposed under new Texas Family Code Section 263.002I, as discussed above.</p> <p>Proposed amendments to Sections 263.301, 263.303, 263.501, and 263.502:</p> <p>Amend Sec. 263.301. NOTICE. (a) Notice of <u>each</u> [a] permanency hearing shall be given as provided by <u>Section 263.0021</u> [Rule 21a, Texas Rules of Civil Procedure] to all persons entitled to notice of the hearing.</p> <p>[(b) The following persons are entitled to at least 10 days' notice of a permanency hearing and are entitled to present evidence and be heard at the hearing:</p> <ul style="list-style-type: none"> (1) the department; (2) the foster parent, preadoptive parent, relative of the child providing care, or director of the group home or institution where the child is residing; (3) each parent of the child; (4) the managing conservator or guardian of the child; (5) an attorney ad litem appointed for the child under Chapter 107; (6) a volunteer advocate appointed for the child under Chapter 107; (7) the child if: <ul style="list-style-type: none"> (A) the child is 10 years of age or older; or (B) the court determines it is appropriate for the child to receive notice; and (8) any other person or agency named by the court to have

		<p>an interest in the child's welfare.</p> <p>(c) If a person entitled to notice under Chapter 102 or this section has not been served, the court shall review the department's or other agency's efforts at attempting to locate all necessary persons and requesting service of citation and the assistance of a parent in providing information necessary to locate an absent parent.]</p> <p>Amend Sec. 263.303. PERMANENCY PROGRESS REPORT.</p> <p>(a) Not later than the 10th day before the date set for each permanency hearing <u>prior to a final order</u> [other than the first permanency hearing], the department or other authorized agency shall file with the court and provide to each party, the child's attorney ad litem, the child's guardian ad litem, and the child's volunteer advocate a permanency progress report unless the court orders a different period for providing the report.</p> <p>(b) The permanency progress report shall <u>contain</u>:</p> <ol style="list-style-type: none"> (1) <u>information necessary for the court to conduct the permanency hearing and make its findings and determination pursuant to Section 263.306; [recommend that the suit be dismissed; or]</u> (2) <u>information on significant events as defined in Section 263.0022(c); and [recommend that the suit continue, and:</u> <ol style="list-style-type: none"> (A) identify the date for dismissal of the suit under this chapter; (B) provide: <ol style="list-style-type: none"> (i) the name of any person entitled to notice under Chapter 102 who has not been served; (ii) a description of the efforts by the department or another agency to locate and request service of citation; and (iii) a description of each parent's assistance in providing information necessary to locate an unserved party; (C) evaluate the parties' compliance with temporary orders and with the service plan; (D) evaluate whether the child's placement in substitute care meets the child's needs and recommend other plans or services to meet the child's special needs or circumstances; (E) describe the permanency plan for the child and recommend actions necessary to ensure that a final order consistent with that permanency plan, including the concurrent permanency goals contained in that plan, is rendered before the date for dismissal of the
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		<p>suit under this chapter;</p> <p>(F) with respect to a child 16 years of age or older, identify the services needed to assist the child in the transition to adult life; and</p> <p>(G) with respect to a child committed to the Texas Youth Commission or released under supervision by the Texas Youth Commission:</p> <p style="padding-left: 40px;">(i) evaluate whether the child's needs for treatment and education are being met;</p> <p style="padding-left: 40px;">(ii) describe, using information provided by the Texas Youth Commission, the child's progress in any rehabilitation program administered by the Texas Youth Commission; and</p> <p style="padding-left: 40px;">(iii) recommend other plans or services to meet the child's needs.]</p> <p><u>(3) any additional information the department determines to be appropriate or that is requested by the court relevant to the findings and determinations to be made by the court pursuant to Section 263.306.</u></p> <p>(c) A parent whose parental rights are the subject of a suit affecting the parent-child relationship, the attorney for that parent, or the child's attorney ad litem or guardian ad litem may file a response to the department's or other agency's report filed under <u>this section</u> Subsection (b). A response must be filed not later than the third day before the date of the hearing.</p> <p>Amend Sec. 263.501. PERMANENCY HEARING AFTER FINAL ORDER [PLACEMENT REVIEW]. (a) If the department has been named as a child's managing conservator in a final order that does not include termination of parental rights, the court shall conduct a <u>permanency</u> [placement review] hearing <u>after a final order</u> at least once every six months until the <u>department is no longer the child's managing conservator</u> [child becomes an adult].</p> <p>(b) If the department has been named as a child's managing conservator in a final order that terminates a parent's parental rights, the court shall conduct a <u>permanency</u> [placement review] hearing not later than the 90th day after the date the court renders the final order. The court shall conduct additional <u>permanency</u> [placement review] hearings at least once every six months until the <u>department is no longer the child's managing conservator</u> [date the child is adopted or the child becomes an adult].</p> <p>(c) Notice of <u>each permanency</u> [a placement review] hearing</p>
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		<p>shall be given as provided by <u>Section 263.0021</u> [Rule 21a, Texas Rules of Civil Procedure,] to each person entitled to notice of the hearing.</p> <p>(d) [The following are entitled to not less than 10 days' notice of a placement review hearing and are entitled to present evidence and be heard at the hearing:</p> <ul style="list-style-type: none"> (1) the department; (2) the foster parent, preadoptive parent, relative of the child providing care, or director of the group home or institution in which the child is residing; (3) each parent of the child; (4) each possessory conservator or guardian of the child; (5) the child's attorney ad litem and volunteer advocate, if the appointments were not dismissed in the final order; (6) the child if: <ul style="list-style-type: none"> (A) the child is 10 years of age or older; or (B) the court determines it is appropriate for the child to receive notice; and (7) any other person or agency named by the court as having an interest in the child's welfare. <p>(e) The licensed administrator of the child placing agency responsible for placing the child is entitled to not less than 10 days' notice of a placement review hearing.</p> <p>(f) The child shall attend each permanency [placement review] hearing in accordance with Section 232.302 [unless the court specifically excuses the child's attendance. A child committed to the Texas Youth Commission may attend a placement review hearing in person, by telephone, or by videoconference. The court shall consult with the child in a developmentally appropriate manner regarding the child's permanency or transition plan, if the child is four years of age or older. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing].</p> <p>[(g)] (e) A court required to conduct <u>permanency</u> [placement review] hearings for a child for whom the department has been appointed permanent managing conservator may not dismiss a suit affecting the parent-child relationship filed by the department regarding the child while the child is committed to the <u>Texas Juvenile Justice Department</u> [Texas Youth Commission] or released under the supervision of the <u>Texas Juvenile Justice Department</u> [Texas Youth Commission], unless the child is adopted or permanent managing conservatorship of the child is awarded to an individual other than the department.</p>
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		<p>Amend Sec. 263.502. PERMANENCY PROGRESS REPORT AFTER FINAL ORDER [PLACEMENT REVIEW]. (a) Not later than the 10th day before the date set for a <u>permanency</u> [placement review] hearing, the department or other authorized agency shall file a <u>permanency progress</u> [placement review] report with the court and provide a copy to each person entitled to notice under Section <u>263.0021</u> [263.501(d)].</p> <p>(b) [For good cause shown, the court may order a different time for filing the placement review report or may order that a report is not required for a specific hearing.] <u>The permanency progress report must contain:</u></p> <ol style="list-style-type: none"> <u>(1) information necessary for the court to conduct the permanency hearing and make its findings and determination pursuant to Section 263.503;</u> <u>(2) information on significant events as defined in Section 263.0022(c);</u> <u>(3) any additional information the department determines is appropriate or that is requested by the court relevant to the findings and determinations to be made by the court pursuant to Section 263.503.</u> <p>(c) <u>For good cause shown, the court may order a different time for filing the permanency progress report or may order that a report is not required for a specific hearing.</u> [The placement review report must identify the department's permanency goal for the child and must:</p> <ol style="list-style-type: none"> (1) evaluate whether the child's current placement is appropriate for meeting the child's needs; (2) evaluate whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care; (3) contain a transition plan for a child who is at least 16 years of age that identifies the services and specific tasks that are needed to assist the child in making the transition from substitute care to adult living and describes the services that are being provided through the Transitional Living Services Program operated by the department; (4) evaluate whether the child's current educational placement is appropriate for meeting the child's academic needs; (5) identify other plans or services that are needed to meet the child's special needs or circumstances; (6) describe the efforts of the department or authorized agency to place the child for adoption if parental rights to the child have
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		<p>been terminated and the child is eligible for adoption, including efforts to provide adoption promotion and support services as defined by 42 U.S.C. Section 629a and other efforts consistent with the federal Adoption and Safe Families Act of 1997 (Pub. L. No. 105-89);</p> <p>(7) for a child for whom the department has been named managing conservator in a final order that does not include termination of parental rights, describe the efforts of the department to find a permanent placement for the child, including efforts to:</p> <p style="padding-left: 40px;">(A) work with the caregiver with whom the child is placed to determine whether that caregiver is willing to become a permanent placement for the child;</p> <p style="padding-left: 40px;">(B) locate a relative or other suitable individual to serve as permanent managing conservator of the child; and</p> <p style="padding-left: 40px;">(C) evaluate any change in a parent's circumstances to determine whether:</p> <p style="padding-left: 80px;">(i) the child can be returned to the parent; or</p> <p style="padding-left: 80px;">(ii) parental rights should be terminated;</p> <p>(8) with respect to a child committed to the Texas Juvenile Justice Department or released under supervision by the Texas Juvenile Justice Department:</p> <p style="padding-left: 40px;">(A) evaluate whether the child's needs for treatment and education are being met;</p> <p style="padding-left: 40px;">(B) describe, using information provided by the Texas Juvenile Justice Department, the child's progress in any rehabilitation program administered by the Texas Juvenile Justice Department; and</p> <p style="padding-left: 40px;">(C) recommend other plans or services to meet the child's needs; and</p> <p>(9) identify any placement changes that have occurred since the most recent court hearing concerning the child and describe any barriers to sustaining the child's placement, including any reason for which a substitute care provider has requested a placement change.</p> <p>(d) If the goal of the department's permanency plan for a child is to find another planned, permanent living arrangement, the placement review report must document a compelling reason why adoption, permanent managing conservatorship with a relative or other suitable individual, or returning the child to a parent are not in the child's best interest].</p>
I3	263.302 and 263.50I(f) Children in Court	DFPS notes that although it is crucial for many youth to attend court hearings, it may not be in the best interest of every child to attend every hearing. DFPS thus suggests

	(TR, p.53)	<p>amendments to allow children to attend court if they want to, but also argues for a presumption that it is not in the best interest of a child under the age of 10 to attend each review hearing – presumably even if they want to. Finally, DFPS suggests that before ordering a child younger than 10 to attend a hearing, the court must consider a number of factors which include: 1) the child’s input; 2) the recommendations of the caseworker and others appointed to the case; 3) any negative consequences to the child, such as absence from school, long wait times, and emotional turmoil; or 4) other factors relevant to the child’s best interest.</p> <p>According to the American Bar Association Standards for Representing Children in Child Protection Cases, children should have a right to meaningfully participate in the case, including the right to be present at significant court hearings. Under our current framework, the decision to excuse a child from attending a court hearing currently lies within the court’s discretion. This discretion should remain with the courts and should not be eliminated solely on the basis of the age of the child as suggested by DFPS.</p> <p>Child advocates and many experienced child welfare judges believe a child’s attendance at a court hearing may be extremely critical, no matter the child’s age. For foster youth, it is an opportunity to participate in an event that has the potential to change the child’s life. Even if the child does not speak to the judge privately, the fact that the child participated or was even passively involved in the hearing can leave the child with a better understanding of where things stand with his or her case and leaves the judge and others with a genuine appreciation for those impacted by the decisions.</p> <p>In sum, age should not stand as the primary criterion for determining when a child should attend a court hearing. The judge, as the experienced decisionmaker and the person who bears the responsibility for overseeing the case, should make the decision on court attendance. Vesting this</p>
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		<p>decision in the judge, however, does not mean that input from the caseworker, the child, and the child's attorney and guardian ad litem is not critical to the judge's decision.</p> <p>Proposed language for child attendance at hearings:</p> <p>Amend Sec. 263.302. CHILD'S ATTENDANCE AT HEARING. [The child shall attend each permanency hearing unless the court specifically excuses the child's attendance. A child committed to the Texas Youth Commission may attend a permanency hearing in person, by telephone, or by videoconference. The court shall consult with the child in a developmentally appropriate manner regarding the child's permanency plan, if the child is four years of age or older and if the court determines it is in the best interest of the child. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing.]</p> <p><u>(a) It is a rebuttable presumption that the child's attendance in person at each permanency hearing is in the best interest of the child.</u></p> <p><u>(b) Upon request of the department or the attorney ad litem appointed for the child or upon the court's own motion, the court may excuse the child's attendance. The request must state the reasons for waiving the child's attendance and be submitted to the court and all parties entitled to notice of the permanency hearing, not less than ten working days before the hearing. The department, a parent of the child, the attorney for that parent, or the child's attorney ad litem or guardian ad litem may submit a response to the request to excuse the child's attendance not less than three working days prior to the hearing. In the absence of a timely response or court order denying the request, the request shall be deemed granted.</u></p> <p><u>(c) In determining whether to excuse the child's attendance, the court shall consider all relevant factors, including:</u></p> <ol style="list-style-type: none"> <u>(1) the child's wishes;</u> <u>(2) any transportation barriers to securing the child's attendance;</u> <u>(3) whether the child will be required to be absent from school or a significant school-related event or activity;</u> <u>(4) whether the child has any medical, mental or behavioral health issues that could cause potential harm to the child or others;</u>
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		<p>(5) <u>whether the condition of the court's docket for the day of the hearing will be a barrier to meaningful participation by the child; and</u></p> <p>(6) <u>any other factor relevant to the child's best interest.</u></p> <p><u>(d) If the child's attendance in person at a permanency hearing is excused, upon the child's election or the court's own motion, the child may attend a permanency hearing by telephone, videoconference, or other means of electronic communication approved by court, or the child may submit a written statement or pre-recorded video statement to the court.</u></p> <p><u>(e) The court shall consult, in a developmentally appropriate manner, with each child attending a permanency hearing in person unless the court finds that it is not in the child's best interest. The court may consult with the child in chambers.</u></p> <p><u>(f) A child committed to the Texas Juvenile Justice Department may attend a permanency hearing in person, by telephone, or by videoconference.</u></p> <p><u>(g) The failure of the child to attend a hearing does not affect the validity of an order rendered at the hearing.</u></p> <p>Amend Sec. 263.501. <u>PERMANENCY HEARING AFTER FINAL ORDER</u> [PLACEMENT REVIEW]. (a) If the department has been named as a child's managing conservator in a final order that does not include termination of parental rights, the court shall conduct a <u>permanency</u> [placement review] hearing <u>after a final order</u> at least once every six months until the <u>department is no longer the child's managing conservator</u> [child becomes an adult].</p> <p>(b) If the department has been named as a child's managing conservator in a final order that terminates a parent's parental rights, the court shall conduct a <u>permanency</u> [placement review] hearing not later than the 90th day after the date the court renders the final order. The court shall conduct additional <u>permanency</u> [placement review] hearings at least once every six months until the <u>department is no longer the child's managing conservator</u> [date the child is adopted or the child becomes an adult].</p> <p>(c) Notice of <u>each permanency</u> [a placement review] hearing shall be given as provided by <u>Section 263.0021</u> [Rule 21a, Texas Rules of Civil Procedure,] to each person entitled to notice of</p>
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		<p>the hearing.</p> <p>(d) {The following are entitled to not less than 10 days' notice of a placement review hearing and are entitled to present evidence and be heard at the hearing:</p> <ul style="list-style-type: none"> (1) the department; (2) the foster parent, preadoptive parent, relative of the child providing care, or director of the group home or institution in which the child is residing; (3) each parent of the child; (4) each possessory conservator or guardian of the child; (5) the child's attorney ad litem and volunteer advocate, if the appointments were not dismissed in the final order; (6) the child if: <ul style="list-style-type: none"> (A) the child is 10 years of age or older; or (B) the court determines it is appropriate for the child to receive notice; and (7) any other person or agency named by the court as having an interest in the child's welfare. <p>(e) The licensed administrator of the child placing agency responsible for placing the child is entitled to not less than 10 days' notice of a placement review hearing.</p> <p>(f) The child shall attend each permanency [placement review] hearing in accordance with Section 232.302 [unless the court specifically excuses the child's attendance. A child committed to the Texas Youth Commission may attend a placement review hearing in person, by telephone, or by videoconference. The court shall consult with the child in a developmentally appropriate manner regarding the child's permanency or transition plan, if the child is four years of age or older. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing].</p> <p>[(g)] (e) A court required to conduct <u>permanency</u> [placement review] hearings for a child for whom the department has been appointed permanent managing conservator may not dismiss a suit affecting the parent-child relationship filed by the department regarding the child while the child is committed to the <u>Texas Juvenile Justice Department</u> [Texas Youth Commission] or released under the supervision of the <u>Texas Juvenile Justice Department</u> [Texas Youth Commission], unless the child is adopted or permanent managing conservatorship of the child is awarded to an individual other than the department.</p>
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14	263.303 and 263.502 Court Report Content (TR, pp. 37-40)	<p>For a number of years, DFPS has filed court reports as statutorily required by Sections 263.303 and 263.502. Court reports are designed to inform the court and other parties about a variety of important issues such as: 1) why the family came to the attention of DFPS; 2) details about the children involved, including age, gender, education, or medical needs; 3) the identity of relatives who might be appropriate caregivers; 4) information about biological and alleged parents; 5) any criminal and CPS history; 6) the persons entitled to service of process and notice of case events; 7) information about the deadline by which the legal case must be resolved; and 8) the Department's plan for the child and the family.</p> <p>DFPS proposes reducing the long-standing, and detailed court reports to a "brief" summary of issues that DFPS considers relevant or sufficient to allow the judge to conduct hearings under Sections 263.306 and 263.503, or even replacing the court report with the Family Plan of Service, which likely will not provide courts with the information they need to make informed judicial decisions. The Department's proposal also restricts a judge's ability to request a separate report if DFPS determines that it can satisfy the requirements of state and federal law with another document. The latter change unnecessarily infringes on a trial court's discretion to make decisions concerning the child's welfare.</p> <p>Proposed amendments to Sections 263.303 and 263.502 follow:</p> <p>Amend Sec. 263.303. PERMANENCY PROGRESS REPORT.</p> <p>(a) Not later than the 10th day before the date set for each permanency hearing <u>prior to a final order</u> [other than the first permanency hearing], the department or other authorized agency shall file with the court and provide to each party, the child's attorney ad litem, the child's guardian ad litem, and the child's volunteer advocate a permanency progress report unless the court orders a different period for providing the report.</p> <p>(b) The permanency progress report shall <u>contain:</u></p> <p>(1) <u>information necessary for the court to conduct the permanency hearing and make its findings and</u></p>
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		<p>determination pursuant to Section 263.306; [recommend that the suit be dismissed; or]</p> <p>(2) <u>information on significant events as defined in Section 263.0022(c); and</u> [recommend that the suit continue; and:</p> <p style="padding-left: 40px;">(A) identify the date for dismissal of the suit under this chapter;</p> <p style="padding-left: 40px;">(B) provide:</p> <p style="padding-left: 80px;">(i) the name of any person entitled to notice under Chapter 102 who has not been served;</p> <p style="padding-left: 80px;">(ii) a description of the efforts by the department or another agency to locate and request service of citation; and</p> <p style="padding-left: 80px;">(iii) a description of each parent's assistance in providing information necessary to locate an unserved party;</p> <p style="padding-left: 40px;">(C) evaluate the parties' compliance with temporary orders and with the service plan;</p> <p style="padding-left: 40px;">(D) evaluate whether the child's placement in substitute care meets the child's needs and recommend other plans or services to meet the child's special needs or circumstances;</p> <p style="padding-left: 40px;">(E) describe the permanency plan for the child and recommend actions necessary to ensure that a final order consistent with that permanency plan, including the concurrent permanency goals contained in that plan, is rendered before the date for dismissal of the suit under this chapter;</p> <p style="padding-left: 40px;">(F) with respect to a child 16 years of age or older, identify the services needed to assist the child in the transition to adult life; and</p> <p style="padding-left: 40px;">(G) with respect to a child committed to the Texas Youth Commission or released under supervision by the Texas Youth Commission:</p> <p style="padding-left: 80px;">(i) evaluate whether the child's needs for treatment and education are being met;</p> <p style="padding-left: 80px;">(ii) describe, using information provided by the Texas Youth Commission, the child's progress in any rehabilitation program administered by the Texas Youth Commission; and</p> <p style="padding-left: 80px;">(iii) recommend other plans or services to meet the child's needs.]</p> <p>(3) <u>any additional information the department determines to be appropriate or that is requested by the court relevant to the findings and determinations to be made by the court pursuant to Section 263.306.</u></p>
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		<p>(c) A parent whose parental rights are the subject of a suit affecting the parent-child relationship, the attorney for that parent, or the child's attorney ad litem or guardian ad litem may file a response to the department's or other agency's report filed under <u>this section</u> Subsection (b). A response must be filed not later than the third day before the date of the hearing.</p> <p>Amend Sec. 263.502. PERMANENCY PROGRESS REPORT AFTER FINAL ORDER [PLACEMENT REVIEW]. (a) Not later than the 10th day before the date set for a <u>permanency</u> [placement review] hearing, the department or other authorized agency shall file a <u>permanency progress</u> [placement review] report with the court and provide a copy to each person entitled to notice under Section <u>263.0021</u> [263.501(d)].</p> <p>(b) [For good cause shown, the court may order a different time for filing the placement review report or may order that a report is not required for a specific hearing.] <u>The permanency progress report must contain:</u></p> <ol style="list-style-type: none"> <u>(1) information necessary for the court to conduct the permanency hearing and make its findings and determination pursuant to Section 263.503;</u> <u>(2) information on significant events as defined in Section 263.0022(c);</u> <u>(3) any additional information the department determines is appropriate or that is requested by the court relevant to the findings and determinations to be made by the court pursuant to Section 263.503.</u> <p>(c) <u>For good cause shown, the court may order a different time for filing the permanency progress report or may order that a report is not required for a specific hearing.</u> [The placement review report must identify the department's permanency goal for the child and must:</p> <ol style="list-style-type: none"> (1) evaluate whether the child's current placement is appropriate for meeting the child's needs; (2) evaluate whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care; (3) contain a transition plan for a child who is at least 16 years of age that identifies the services and specific tasks that are needed to assist the child in making the transition from substitute care to adult living and describes the services that are being provided through the Transitional Living Services Program
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		<p>operated by the department;</p> <p>(4) evaluate whether the child's current educational placement is appropriate for meeting the child's academic needs;</p> <p>(5) identify other plans or services that are needed to meet the child's special needs or circumstances;</p> <p>(6) describe the efforts of the department or authorized agency to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption, including efforts to provide adoption promotion and support services as defined by 42 U.S.C. Section 629a and other efforts consistent with the federal Adoption and Safe Families Act of 1997 (Pub. L. No. 105-89);</p> <p>(7) for a child for whom the department has been named managing conservator in a final order that does not include termination of parental rights, describe the efforts of the department to find a permanent placement for the child, including efforts to:</p> <p style="padding-left: 40px;">(A) work with the caregiver with whom the child is placed to determine whether that caregiver is willing to become a permanent placement for the child;</p> <p style="padding-left: 40px;">(B) locate a relative or other suitable individual to serve as permanent managing conservator of the child; and</p> <p style="padding-left: 40px;">(C) evaluate any change in a parent's circumstances to determine whether:</p> <p style="padding-left: 80px;">(i) the child can be returned to the parent; or</p> <p style="padding-left: 80px;">(ii) parental rights should be terminated;</p> <p>(8) with respect to a child committed to the Texas Juvenile Justice Department or released under supervision by the Texas Juvenile Justice Department:</p> <p style="padding-left: 40px;">(A) evaluate whether the child's needs for treatment and education are being met;</p> <p style="padding-left: 40px;">(B) describe, using information provided by the Texas Juvenile Justice Department, the child's progress in any rehabilitation program administered by the Texas Juvenile Justice Department; and</p> <p style="padding-left: 40px;">(C) recommend other plans or services to meet the child's needs; and</p> <p>(9) identify any placement changes that have occurred since the most recent court hearing concerning the child and describe any barriers to sustaining the child's placement, including any reason for which a substitute care provider has requested a placement change.</p> <p>(d) If the goal of the department's permanency plan for a child is to find another planned, permanent living arrangement, the placement review report must document a compelling reason</p>
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		why adoption, permanent managing conservatorship with a relative or other suitable individual, or returning the child to a parent are not in the child's best interest].
15	263.306 Permanency Hearings and Court Determinations (TR, pp. 121-25)	<p>Section 263.306 governs the Permanency Hearing process. DFPS recommends amending the court determinations in Section 263.306 in a fairly consequential manner. Permanency Hearings serve multiple purposes, including monitoring: 1) the procedural posture of the case (service, notice, trial dates); 2) the parents' progress in addressing issues that brought their children into foster care in the first place; 3) the child's status, including where the child is living and whether the child's emotional, educational, medical, psychological and other needs are being met; and 4) the long-term plan for the child. These issues are important to determinations about the child's welfare and at six months into the legal case, should be considered by the court before any further orders are rendered. Simply stated, the list of judicial determinations is lengthy, but necessary.</p> <p>DFPS proposes deleting the existing language and eliminating several essential judicial determinations, including whether: 1) DFPS has located all persons entitled to service of process; 2) the child has had the opportunity to express an opinion about his or her medical care; and 3) additional services or supports are needed to ensure a final order is rendered by the dismissal deadline. Importantly, the Department's proposed changes fail to address foster youth who are also committed to the Texas Juvenile Justice Department.</p> <p>Texas judges rely on the Family Code to provide a framework and checklist of relevant factors to consider at the hearing. By removing specific determinations from Section 263.306, the process becomes more indeterminate and unpredictable, which may lead to disparate outcomes for children similarly situated.</p>

		<p>All that said, streamlining certain provisions of Section 263.303 with Section 263.306 and cleaning up certain provisions to address numbering issues, duplication, and outdated terminology is appropriate. The APPLA language proposed by DFPS in new subsection (d) appears suitable.</p> <p>Proposed language for Section 263.306:</p> <p><u>Amend Sec. 263.306. PERMANENCY HEARINGS PRIOR TO FINAL ORDER.</u> (a) <u>At each permanency hearing prior to a final order, the court shall:</u></p> <ul style="list-style-type: none"> <u>(1) identify all persons or parties present at the hearing;</u> <u>(2) review the efforts of the department or other agency in:</u> <ul style="list-style-type: none"> <u>(A) locating and requesting service of citation on all persons entitled to service of citation under Section 102.009; and</u> <u>(B) obtaining the assistance of a parent in providing information necessary to locate an absent parent, alleged father, or relative of the child;</u> <u>(3) review the extent of the parties' compliance with temporary orders and the service plan and the extent of progress that has been made toward alleviating or mitigating the causes necessitating the placement of the child in foster care.</u> <u>(4) review the permanency progress report to determine:</u> <ul style="list-style-type: none"> <u>(A) the safety and well-being of the child;</u> <u>(B) the continuing necessity and appropriateness of the placement, including with respect to a child who has been placed outside of the state, whether that placement continues to be in the best interest of the child;</u> <u>(C) the appropriateness of the primary and concurrent goal for the child developed in accordance with department rule and whether the department has made reasonable efforts to finalize the permanency plan and concurrent plan in effect for the child;</u> <u>(D) whether the child has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on the medical care provided;</u> <u>(E) for a child receiving psychotropic medication, determine whether the child:</u> <ul style="list-style-type: none"> <u>(i) has been provided appropriate non-pharmacological interventions, therapies or strategies to meet the child's needs;</u> <u>(ii) has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days for purposes of the review required by Section 266.011;</u>
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		<p><u>(F) whether an education decision-maker for the child has been identified, and whether the child's education needs and goals have been identified and addressed;</u></p> <p><u>(G) for a child 14 years of age or older, determine services that are needed to assist the child in making the transition from substitute care to independent living if the services are available in the community;</u></p> <p><u>(H) for a child whose permanency goal is another planned permanent living arrangement:</u></p> <p><u>(i) ask the child about the desired permanency outcome for the child;</u></p> <p><u>(ii) make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and provide compelling reasons why it continues to not be in the best interests of the child to:</u></p> <p><u>(a) return home;</u></p> <p><u>(b) be placed for adoption;</u></p> <p><u>(c) be placed with a legal guardian; or</u></p> <p><u>(d) be placed with a fit and willing relative.</u></p> <p><u>(5) determine whether to return the child to the parent or parents if the child's parent or parents are willing and able to provide the child with a safe environment and the return of the child is in the child's best interest.</u></p> <p><u>(6) project a likely date by which the child may be returned to and safely maintained in the child's home, placed for adoption, or placed in permanent managing conservatorship; and</u></p> <p><u>(7) announce the dismissal date and the date of any upcoming hearings in open court.</u></p>
I6	263.307(c) Factors in Determining Best Interest of the Child (TR, p. 124)	DFPS seeks to repeal Section 263.307(c), which requires the court to make specific determinations before adopting the Department's permanency plan for a child 16 years or older. The determinations include: 1) whether the permanency plan submitted to the court includes services to help the youth transition from foster care to independent living; and 2) whether this transition is in the best interest of the child. DFPS argues that this section should be repealed because it includes archaic and redundant language. Repeal of Section 263.307(c) may be ok if proposed amendments to Section 263.306 and 263.503 are enacted.
I7	263.3025 and 263.3026	Section 263.3025 requires DFPS to prepare a permanency plan, including a concurrent plan for each child in its

	<p>Permanency Plan for Child and Limitations on Permanency Goals (TR, p. 121)</p>	<p>conservatorship, and to provide a copy of the plan to each person entitled to notice under current Section 263.301(b). Section 263.3026 sets out the possible permanency goals for a child, including: 1) reunification with a parent; 2) termination of parental rights and adoption; 3) award of permanent managing conservatorship to a relative or other individual; or 4) another planned, permanent living arrangement (APPLA). Section 263.3025 places no additional duty on DFPS beyond what is currently required by policy – to develop a permanency and concurrent plan for each child. Section 263.3026 is helpful to others to understand the permanency plan limitations placed on DFPS. Depending on whether proposed amendments to Sections 263.301, 263.303 and 263.306 are adopted, it may be ok to repeal current Section 263.3025 as the duty to develop and share the plan with others may be incorporated into amendments of said statutes. Repeal of Section 263.3026 would eliminate the statutory limitations placed on the DFPS, and these are not covered elsewhere in statute, but are in DFPS policy and federal law.</p>
18	<p>263.403 Monitored Return of Child to Parent (TR, p. 57-58)</p>	<p>The suggested change for Section 263.403 does not appear to have any relationship to this statute. In discussion with DFPS, it agreed.</p>
19	<p>263.404(b) Final Order Appointing DFPS as Managing Conservator without Terminating Parental Rights: (TR, p. 124)</p>	<p>Section 263.404(b) lists the factors a court must take into consideration before granting managing conservatorship to DFPS without terminating parental rights. DFPS recommends repealing subsection (b) in its entirety, citing the current best practice of achieving positive permanency for youth in long-term care. We agree that positive permanency is important and that elements of this statute are antiquated with regard to findings that older children and children with medical needs may not be adopted or adoptable. Perhaps rather than repealing the entire subsection, the language could be amended to reflect factors that the judge must consider that are supportive of positive permanency and include the child's age.</p>

20	<p>263.503 Placement Review Hearings for children and youth in permanent managing conservatorship (PMC) of the state (TR, pp. 125-28)</p>	<p>Section 263.503 currently requires that the court make certain determinations during Placement Review Hearings, which occur after a final order is entered appointing DFPS as permanent managing conservator of a child, with or without termination of parental rights. As with the Permanency Hearings under Section 263.306, DFPS seeks to condense and amend the judicial determinations in this provision.</p> <p>Proposed language for Section 263.503:</p> <p>Amend Sec. 263.503 <u>PERMANENCY HEARINGS FOLLOWING FINAL ORDER [PLACEMENT REVIEW; PROCEDURE]. (a) At each permanency hearing following rendition of a final order, the court shall:</u></p> <p><u>(1) identify all persons and parties present at the hearing.</u></p> <p><u>(2) review the efforts of the department or other agency in notifying persons entitled to notice under Section 263.0021.</u></p> <p><u>(3) review the permanency progress report to determine:</u></p> <p><u>(A) the safety and well-being of the child;</u></p> <p><u>(B) the continuing necessity and appropriateness of the placement, including with respect to a child who has been placed outside of the state, whether that placement continues to be in the best interest of the child;</u></p> <p><u>(C) the efforts to place the child in the least restrictive environment consistent with the child's best interest and special needs if the child is placed in institutional care;</u></p> <p><u>(D) the appropriateness of the primary and concurrent goal for the child developed in accordance with department rule and whether the department has made reasonable efforts to finalize the permanency plan and the concurrent plan that is in effect for the child, including whether:</u></p> <p><u>(i) the department has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption; or</u></p> <p><u>(ii) another permanent placement, including appointing a relative as permanent managing conservator or returning the child to a parent, is appropriate for the child;</u></p> <p><u>(E) for a child whose permanency goal is another planned permanent living arrangement:</u></p>
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		<p><u>(i) ask the child about the desired permanency outcome for the child;</u></p> <p><u>(ii) make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and provide compelling reasons why it continues to not be in the best interests of the child to:</u></p> <p><u>(a) return home;</u></p> <p><u>(b) be placed for adoption;</u></p> <p><u>(c) be placed with a legal guardian; or</u></p> <p><u>(d) be placed with a fit and willing relative;</u></p> <p><u>(F) if the child is 14 years of age or older, determine services that are needed to assist the child in making the transition from substitute care to independent living if the services are available in the community;</u></p> <p><u>(G) whether the child is receiving appropriate medical care and has been provided the opportunity in a developmentally appropriate manner, to express the child's opinion on the medical care provided;</u></p> <p><u>(H) for a child receiving psychotropic medication, determine whether the child</u></p> <p><u>(i) has been provided appropriate non-pharmacological interventions, therapies or strategies to meet the child's needs;</u></p> <p><u>(ii) has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days for purposes of the review required by Section 266.011;</u></p> <p><u>(I) whether an education decision-maker for the child has been identified, and the child's education needs and goals have been identified and addressed;</u></p> <p><u>(J) for a child for whom the department has been named managing conservator in a final order that does not include termination of parental rights, order the department to provide services to a parent for not more than six months after the date of the placement review hearing if:</u></p> <p><u>(i) the child has not been placed with a relative or other individual, including a foster parent, who is seeking permanent managing conservatorship of the child; and</u></p> <p><u>(ii) the court determines that further efforts at reunification with a parent are:</u></p> <p><u>(a) in the best interest of the child; and</u></p> <p><u>(b) likely to result in the child's safe return to the child's parent; and</u></p>
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		<u>(K) determine whether the department has identified a family or other caring adult who has made a permanent commitment to the child;</u>
21	264.107(d) Placement of Children (TR, p. 78)	DFPS wants to repeal subsection (d) as duplicative of federal law. Subsection (d) requires DFPS to make decisions in a reliable and consistent manner. The current language was enacted in 2007 to clean up statutory language from 2005 that was directed to administrators who were potentially going to make placement decisions for children as the state underwent the original effort at privatization. Although there appears to be little harm in repeal, there is likely little benefit to the agency in doing so.
22	264.107(e), 264.117(b) Limits on Notice to Attorneys Ad Litem of Changes in Child Placement (TR, pp. 67-68, 132)	DFPS recommends changes to Section 264.107(e) that will impact the flow of information to attorneys and guardians ad litem. Currently, Section 264.107(e) requires DFPS, when making placement decisions, to consult with the child's attorney and guardian ad litem and with any court-appointed volunteer advocate for the child, except when making an emergency placement that does not allow time for the required consultations. This statute was passed, in part, because placement changes were being made without input from other parties to the case who are charged with representing the interests of the children. Receiving no notice that a placement change will occur until after it occurs makes it impossible to take action to prevent the placement change from occurring in the first place, even in circumstances in which the change may not be in the child's best interest. A key benefit of early notice to attorneys and guardians is that in evaluating proposed placement changes, ad litem may be able to locate valuable resources to prevent the disruption of the placement or to find another more appropriate placement. If attorneys and guardians ad litem are not notified until after the placement change occurs, the status quo changes, the child's placement is gone, the child will have already changed schools, and most importantly the child will have endured all the disruption and trauma associated with changing homes, families, schools, and communities. Given the potential disruption in the child's

		<p>life and the inadequacy of post-change judicial intervention, as soon as DFPS knows of a placement change, it must first consult with those charged with representing the interests of the child before moving the child. This process becomes even more important given the assistance DFPS now seeks from attorneys and guardians ad litem to identify possible placements, as discussed below.</p> <p>Similarly, DFPS proposes repealing Section 264.117(b), which presently requires DFPS to provide the child's attorney ad litem at least 48 hours' notice prior to the date DFPS changes the child's residential care provider unless DFPS determines an immediate change is necessary to protect the child. DFPS seeks to repeal this section and to address notice in a general notice statute. For the reasons discussed in the paragraph above, this notice should not be repealed. Maintaining the notice requirement ensures that the attorney ad litem is in a position to take timely action to protect the rights and well-being of the child client.</p> <p>DFPS must act on discharge notices in a more timely manner and distribute the notices to the Attorneys and Guardians ad Litem as soon as they are received. The Department should also include discharge notices and placement changes in the list of Significant Events that require notice to certain parties.</p>
23	<p>264.107(g) Placement of Children in DFPS offices (overnight stays in CPS offices) (TR, p. 68)</p>	<p>Section 264.107(g) addresses those situations in which DFPS must temporarily "house" children in DFPS offices due to a lack of appropriate placements. Currently, the agency is required to notify the court not later than the next business day after the child is "housed" in a DFPS office. DFPS seeks to modify the statute to require the agency to notify the court only if the child lacks placement for "one or more nights." This means that notice for any particular segment of a night placement would not trigger notice requirements to the court. Notice to the court allows the court to join efforts to expedite finding an appropriate placement for the child .</p>

24	264.1072 Education Stability Plan (TR, p. 102)	In the Transformation Report, DFPS suggested repeal of this section because it is duplicative of federal law; however, in discussion with DFPS, the agency said it was not in opposition to retaining the current statutory language.
25	264.122 Court Approval Required for Travel Outside of United States by Child in Foster Care: (TR, p. 80)	<p>Section 264.122 requires courts to approve travel outside of the United States by children in the conservatorship of DFPS. DFPS recommends repeal of this section because it asserts that it is onerous and serves no purpose related to the child's safety. This provision is not aimed at child safety and courts must be consulted because allowing a child to leave the United States, or even Texas, may affect the rights of other parties. For example, an unintended consequence might involve a biological parent working to reunify with his or her child through engaging in services and visitation. Allowing a child to leave the United States without considering how that might interfere with the parent's right to visitation with the child is a decision that must be made by the court to ensure all rights are protected. Instead of repealing the statute, an amendment to this provision should be considered.</p> <p>Amend Sec. 264.122. COURT NOTIFICATION</p> <p>[APPROVAL] REQUIRED FOR TRAVEL OUTSIDE UNITED STATES BY CHILD IN FOSTER CARE. [(a)] A child for whom the department has been appointed managing conservator and who has been placed in foster care may travel outside of the United States only if the <u>department has provided written notification to the court and an opportunity to rule on the matter prior to travel.</u> [person with whom the child has been placed has petitioned] the court [for, and the court has rendered an order granting, approval for the child to travel outside of the United States.</p> <p style="padding-left: 40px;">(b) The court shall provide notice to the department and to any other person entitled to notice in the suit if the court renders an order granting approval for the child to travel outside of the United States under this section].</p>

26	264.303-264.306 Orders and Services for At-Risk Children (TR, pp. 82-83)	DFPS recommends repealing Sections 264.303 through 264.306, which fall within Chapter 264, Subchapter D (Services to At-Risk Youth), arguing that the provisions contain archaic language, are unnecessarily burdensome, and are rarely used. Repeal of these sections appears reasonable as they seem to be rarely, if ever, used.
27	264.902 and 264.906 Parental Child Safety Placements (PCSP) and Placement Preference (TR, pp. 85-86)	<p>DFPS proposes changing Section 264.902 and consolidating Subchapter L (Parental Child Safety Placements or PCSPs) into a general directive to CPS to, among other things, “limit the use and duration of PCSPs to the greatest extent possible.” PCSPs are often used to allow parents to place their children in the care of a relative, in lieu of the Department filing a formal suit affecting the parent-child relationship that seeks conservatorship. Under this situation, the parent works with the Department to ameliorate concerns about the child’s safety while the child is in the PCSP’s care – with little to no court involvement. Limiting the use and duration of PCSPs may result in an increase in the number of children being removed from their families more frequently on an emergency basis and placed in non-relative foster care. That said, it may be necessary to discuss how the state can limit the use, duration, and extent that PCSPs are used.</p> <p>Additionally, DFPS recommends repealing Section 264.906, which currently requires DFPS to give priority to placing the child with the PCSP when the Department determines it is necessary to formally seek conservatorship from the court. If this section is repealed, DFPS would not be bound to formally place children with the PCSP, who is likely a relative, and children may be increasingly placed in non-relative foster care.</p>

28	266.004(c) Consent for Medical Care – Notice of Medical Consenter filed with court within five days of designation (TR, p. 69)	<p>Section 266.004(c) requires DFPS to file with the court and each party: 1) the name of the individual designated to exercise the duty and responsibility of providing medical consent within five days of designation; and 2) notice of any change in designation within five days of the change. DFPS suggests eliminating the five-day requirement, claiming information regarding medical consent may be provided to the court and parties at those hearings during which medical care is discussed.</p> <p>A new statute regarding Notice of Significant Events should be considered, as discussed above, and could allow for 10 days notice and various methods to accomplish.</p>
29	266.007 Judicial Review of Medical Care (TR, p. 70)	<p>Section 266.007 requires that certain information related to the medical care of a child in DFPS conservatorship be provided to the court and the child's medical consenter, guardian ad litem, attorney ad litem, parent, if parental rights are not terminated, and any other person determined by DFPS or the court to be necessary or appropriate for review of the provision of medical care to foster children. The list of information required by Section 266.007 is lengthy, but critically important not only to the court but also to the child's advocates as it enables them to make appropriate decisions and to set standards of accountability for the child's medical care. Changes to this statute should be guided, not only by DFPS' input, but by the input of stakeholders and judges who are also in the field and thus knowledgeable about the type of information needed to make informed decisions.</p>
30	266.008(c) Education Passport (TR, p.103)	<p>DFPS seeks to repeal because it is duplicative of federal law in that DFPS is already allowed to share education information with a caregiver or party who is caring for a child, who may also be designated as the child's education decision-maker. The Children's Commission disagrees that this subsection should be repealed. There is little harm in including this provision in the Family Code as it does not impose additional duties on DFPS that it would not otherwise engage in and as it is the guide to which all parties look regarding the actions, duties, and</p>

		responsibilities of others involved in the law suit. Nothing in this statute prohibits the Department from enacting a policy appropriate to its role in fulfilling the statute.
31	Texas Education Code Section 25.001(g) Educational Stability While in Foster Care (TR, p. 44)	<p>The proposed amendment to Texas Education Code Section 25.001(g) may contravene the federal Fostering Connections to Success and Adoptions Act of 2008. This section relates to children being able to remain in their schools of origin when they enter foster care. Last session, this section was broadened to include all grades, not just high school, which was a good thing. The DFPS Transformation Report recommendation was a little muddy as it seeks to expand the statute to allow the child to stay in the school of origin not only at the time of removal but also with each subsequent placement while in foster care. Although this generally is a good idea, it will likely be met with some consternation by education partners, so it really should have been vetted with them to work out language and to avoid endangering the statute. Also, DFPS recommended expanding the statute to include not only the school of origin, but the school district, which possibly contravenes the federal Fostering Connections Act provisions regarding maintaining school stability. Arguably, if a child can't remain in the same school, the same school district may be the next best thing, but school quality/culture/etc. does vary across school districts, so it would be preferable for the primary goal to be the same school. This provision needs additional vetting before being included in a sunset or other bill.</p>
32	264.123 Runaway Children (TR, pp. 80-81)	DFPS suggests rewriting the section to adopt policies and protocols concerning actions that must be taken and the persons to be notified in the event that a child is missing from or returns to foster care. However, the court should be made aware of this type of event, especially as a child missing from foster care may result in significant physical, emotional, or other harm to the child. The provision should continue to require notice to the court, as it does currently in Subsections (a)(2) and (b).